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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,325	10/18/2000	Hubert Vattement	11123.19US01	5206
23552	7590	11/10/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			TUCKER, PHILIP C	
			ART UNIT	PAPER NUMBER
			1712	

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/691,325

Applicant(s)

VATTEMENT, HUBERT

Examiner

Philip C Tucker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 12-22 and 24-38 is/are pending in the application.
- 4a) Of the above claim(s) 24-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 13-22 and 34-38 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 13-20, 22, and 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Cowan (5343952).

Cowan teaches a cement composition comprising blast furnace slag in amounts as taught in column 13, lines 4-20, clay such as bentonite (column 5, lines 9-11), an activator in the amounts as taught in column 15, lines 4-28 and water. The Blaine surface area may be as low as 500 cm squared per gram, which would clearly have particle sizes within the scope of the present invention (column 6, lines 8-18). The ratios of components are within the scope of the calcium oxide/silicon oxide ratios of the claims, and within the scope of providing the same chemical modulus of the present invention (column 6, lines 19-24).

3. Claims 14, 16-20, 22, 34 and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Hale (5361842).

Hale teaches a cement composition comprising blast furnace slag in amounts as taught in column 28, lines 1-7, clay such as bentonite (column 18, lines 46-57), an

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activator in the amounts as taught in column 20, lines 15-40 and water. The Blaine surface area may be as low as 2000 cm squared per gram, which would clearly have particle sizes within the scope of the present invention (column 5, lines 15-21). The ratios of components are within the scope of the calcium oxide/silicon oxide ratios of the claims, and within the scope of providing the same chemical modulus of the present invention (column 5, lines 26-31).

4. Claims 14-15, 18-21, 34, 35 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Rae (5447197).

Rae teaches a cement for use in a wellbore which comprises blast furnace slag containing particle sizes up to 100 micrometers (column 3, lines 40-42), clay such as bentonite (column 5, lines 14-20), and accelerators within the scope of the present invention (column 6, lines 19-42). The cement also contains Portland cement which would act as an activator in the present invention (column 3, lines 50-57).

5. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Applicants arguments have been considered but are not deemed fully persuasive. With respect to Cowan, initially it was stated that claim 14 was not previously rejected. Such was not the case as claims 13 through 20 were rejected.

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Applicant has argued that the size and the cement to water ratio is not taught therein.

With respect to the size, applicant has only concentrated on the preferred particle size 4000-7000 cm squared per gram or of 16 –31 micrometers, but has ignored that Cowan specifically teaches a particle size down to as low as 500 cm squared per gram (see column 6, line 10). Case law has held that “all disclosures of the prior art, including unpreferred embodiments must be considered”, In re Lamberti 192 USPQ 278.

With respect to the cement water weight weight ratio, since a barrel contains 42 gallons, the amounts of 1-100, 10-80 and 20-50 pounds of blast furnace slag per barrel of water given in column 13, lines 4-14, would clearly satisfy the ratio of between 0.1 and 0.25 being claimed by applicant.

With respect to Hale and Rae, claim 1 and those dependent therefrom are distinguished, since claim 1 uses the term “consisting of”, which differs from Hale and Rae which teach the additional use of a retarder. Claim 14 and 34 use “comprises” and “comprising” which is thus does not distinguishing. Rae specifically teaches using particle sizes up to 100 micrometers, and Hale teaches using particle sizes of Blaine fineness of 2000 cm squared per gram, which would be inclusive of the size ranges within the scope of the present invention. In view of Lamberti, although these are not taught as the preferred sizes, such must be considered. The rejections are thus maintained.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C Tucker whose telephone number is 571-272-1095. The examiner can normally be reached on Monday - Friday, Flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'P. Tucker', with a long horizontal flourish extending to the right.

Philip C Tucker
Primary Examiner
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PCT-3165